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PML**DECISION****THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548**FILE:** B-204185**DATE:** December 15, 1981**MATTER OF:** Michael Yanak - Temporary Quarters
Subsistence Expenses**DIGEST:**

1. Transferred employee entered commercial lodgings at new duty station on October 14, 1980, and continually resided in such temporary quarters until he actually occupied rented house with intent to permanently reside there on November 12, 1980. Employee is entitled to temporary quarters subsistence expenses notwithstanding that during this period he rented an unfurnished house, moved in some personal possessions, and ate some meals there. Rule that eligibility for temporary quarters subsistence expenses terminates at any time employee first occupies new permanent quarters is not applicable here since facts demonstrate that during the period of the claim the employee never "occupied" the rented house within the meaning of the rule.
2. Agency would reduce amount claimed by employee for subsistence expenses as unreasonable under paragraph 2-5.4a of the FTR because claimed costs exceeded average costs in valid statistical reference. Employing agency has initial responsibility to determine reasonableness of expenditures for subsistence while occupying temporary quarters. Where agency has exercised that responsibility, GAO will not substitute its judgment for that of the agency in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious.

Mr. Alfred M. Zuck, Assistant Secretary for Administration and Management, Department of Labor, requests our decision concerning an employee's claim for temporary quarters subsistence expenses incurred in connection with an authorized permanent change of station. The request is submitted on behalf of the employee, Mr. Michael Yanak, who requests reconsideration of certain disallowed costs by Mr. Kenneth J. Lynch, an authorized certifying officer with the Mine Safety and Health Administration. Pursuant to the analysis which follows we determine that Mr. Yanak may be reimbursed temporary quarters subsistence expenses for the period before he actually occupied new permanent residence quarters; however, the amount claimed may be reduced in accordance with the agency's determination of reasonable subsistence expenses.

BACKGROUND

In October 1980, Mr. Yanak was transferred from Pikeville, Kentucky, to Arlington, Virginia. On October 14, 1980, Mr. Yanak and his spouse entered temporary quarters at the new duty station staying at one and then another motel through November 12, 1980. During this period Mr. Yanak rented an unfurnished home into which he moved his limited household possessions on October 27, 1980. After this time Mr. Yanak ate some of his meals at the newly rented house. However, during the period between October 14, and November 12, Mr. Yanak remained at the motel because his personal belongings did not include beds, sofas, chairs, and other items of furniture commonly considered necessary to occupancy of permanent residence quarters. Having sold these items of furniture with his mobile home at the old duty station, Mr. Yanak has stated that he purchased new and used furniture between November 2 and 11, and on November 12, he moved out of temporary quarters at the motel and into the newly furnished rented house.

The agency reports that in accordance with policy they allowed Mr. Yanak temporary quarters subsistence expenses only through October 28, and disallowed such expenses between October 29, and November 12, 1980. Applying the rule that the period of eligibility for temporary quarters subsistence expenses terminates when an employee or any member of his immediate family occupies permanent residence quarters, the agency terminated Mr. Yanak's allowance on October 28, determining that the moving of the

employee's belongings into the rented house and the purchase of groceries and eating of meals at the house constituted occupancy under the controlling rule. In addition the agency has determined that the \$253.98 amount Mr. Yanak claimed for meals and groceries between October 28 and November 12, 1980, was unreasonably high. Applying standards established by the Bureau of Labor Statistics, the agency has determined that the reasonable expense for meals for Mr. Yanak and his spouse during the period in question should be \$125.21.

ESTABLISHING THE ENTITLEMENT TO ADDITIONAL
TEMPORARY QUARTERS SUBSISTENCE EXPENSES

Paragraph 2-5.2c of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), issued by the General Services Administration to implement 5 U.S.C. § 5724a(a) (3), (1976), defines temporary quarters as follows:

"What constitutes temporary quarters. The term 'temporary quarters' refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized."

Paragraph 2-5.2f provides in part that:

" * * * The employee may occupy temporary quarters at one location while members of the immediate family occupy quarters at another location. The period of eligibility shall terminate when the employee or any member of his immediate family occupies permanent residence quarters or when the allowable time limit expires, whichever occurs first."

Generally, the determination of whether quarters are in fact "temporary" within the meaning of the regulation is based on the intent of the employee at the time he moves into and occupies the quarters. . Richard W. Coon, B-14880, January 9, 1980, and decisions cited therein. The rule with regard to the period of eligibility for temporary quarters is that at the time the employee or any member of his immediate family occupies new permanent

quarters the eligibility terminates. Mr. Lawrence J. Blus, B-192011, December 12, 1978. Also, when an employee and his family occupy the residence in which they intend to live, the allowance is terminated even though the residence is not fully furnished at the time, utilities and appliances may not have been connected, and despite the fact that the residence still may be under construction and unsuitable for occupancy. See Henry W. Whitley, B-198026, June 11, 1980. Thus, for example, we held in B-174971, February 28, 1972, that upon the employee's rental and occupancy of the unfurnished and unfinished basement of the house he intended to purchase, he was deemed to have moved into his permanent residence. It was irrelevant whether the portion of the residence occupied was suitable for occupancy. What was essential however was an initial factual determination that the employee had actually occupied and continued to occupy the quarters in question. This necessary determination distinguishes Mr. Yanak's case from this line of reasoning.

During the period of his claim from October 14 to November 12, 1980, Mr. Yanak temporarily resided at commercial lodgings at his new duty station. Notwithstanding that during the same period he rented a house he intended would be his new permanent residence, that he moved some personal belongings into the rented house, and that he took some of his meals at that house, the fact remains that Mr. Yanak did not actually occupy the rented house with the intent to permanently reside there until November 12, 1980. In these circumstances we find Mr. Yanak's claim to be analogous to the reasoning set forth in our decision 53 Comp. Gen. 508 (1974). In that case we held that where an employee occupied his newly purchased unfurnished house for 1 night, returned to a motel for 2 days, reoccupied the house for 5 days, and returned to the motel for 2 days before moving to the unfurnished house, he may be reimbursed temporary quarters subsistence expenses for the period before his permanent move. His frequent returns to the motel manifested his intent to occupy the house only on a temporary basis. We are similarly persuaded in the present case that Mr. Yanak temporarily occupied the motel room during the entire period of his claim and did not permanently occupy the rented house in which he intended to remain until November 12, 1980.

Accordingly, Mr. Yanak may be reimbursed temporary quarters subsistence expenses for the additional period from October 28 through and including November 12, 1980, the day during which occupancy of permanent quarters began. See paragraph 2-5.2g of the FTR. We also agree with Mr. Yanak's contention that the correct per diem basis is \$75 for the period he is claiming temporary quarters subsistence expenses. See FPMR Temp. Reg. A-11, Supp. 11, attachment A dated September 26, 1980, with an effective date of October 5, 1980. Thus, his reimbursement should be computed on that basis.

ESTABLISHING THE AMOUNT OF ADDITIONAL
TEMPORARY QUARTERS SUBSISTENCE EXPENSE

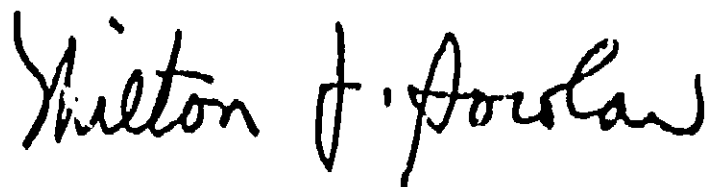
Under 5 U.S.C. § 5724a(a)(3), and implementing regulations contained at chapter 2, part 5, of the FTR, a transferred employee may be reimbursed subsistence expenses for himself and his immediate family for a period of up to 30 days while occupying temporary quarters. Under paragraph 2-5.4b of these regulations actual expenses are required to be itemized in a manner prescribed by the head of the agency that will permit at least a review of amounts spent daily for lodging, meals, and other items. Although the regulations do not require a meal-by-meal statement of costs, they do require that the actual amounts spent be shown. Thus, while average estimated meal costs are not generally held to be acceptable, claims have been allowed on the basis of such estimates where the expenses claimed are reasonable and are based on actual expenditures. Eugene R. Pori, B-198523, October 6, 1980.

It is the responsibility of the employing agency, in the first instance, to determine that subsistence expenses are reasonable. Where the agency has exercised that responsibility, the General Accounting Office will generally not substitute its judgment for that of the agency, in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious. 55 Comp. Gen. 1107 (1976); reconsidered and amplified, 56 Comp. Gen. 604 (1977). And, the evaluation of the reasonableness of amounts claimed must be made on the basis of the facts in each case. 52 Comp. Gen. 78 (1972). To assist agencies in making an independent determination as to the reasonableness of claimed subsistence expenses in a given case, we have stated that the information published by the Bureau

of Labor Statistics provides an objective and readily available indication of reasonable expenditures for subsistence by families in certain geographical locations. When the expenses incurred by an employee appear unreasonable, an adjustment for reimbursement purposes may be made by reference to such information. 56 Comp. Gen. 604 (1977), supra.

In Mr. Yanak's case the agency would reduce the amount allowable for meals and groceries claimed between October 28, and November 12, 1980, from the \$253.98 amount claimed by Mr. Yanak to a total of \$125.21. Referring again to paragraph 2-5.4a of the FTR, the agency has determined that the amount claimed for meals and groceries consumed during the period in question is unreasonable. In researching this conclusion the agency has relied upon statistical guidelines and budget data furnished by the Bureau of Labor Statistics. Applying these guidelines the agency has concluded that the maximum amount allowable for food for Mr. Yanak and his spouse was \$7.35 per day, with a 13-1/2 percent high cost of living increase for a total of \$125.21 for the 15-day period of the claim.

Thus, the agency would reduce the amount claimed to a reasonable sum as determined on the basis of the evidence in the case and in reliance upon statistics and other information gathered by Government agencies regarding living costs in relevant locations. As the agency's actions evaluating Mr. Yanak's claim have not been clearly erroneous, arbitrary, or capricious, this Office has no reason to substitute its judgement for that of the agency on the reasonableness of that portion of Mr. Yanak's claimed subsistence expenses.

for 

Comptroller General
of the United States